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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 87-993

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1987

STATE OF MISSOURI,

Petitioner,

vs.

BRIAN CARPENTER,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSOURI

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION

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INDEX

	Page
Table of Authorities.....	1
Opinion Below.....	2
Statement of the Case.....	3
Argument.....	4
Conclusion.....	6

TABLE OF AUTHORITIES

Cases

Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971)

Gooding v. Wilson, 405 U.S. 518, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972)

Schenech v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919)

State of Missouri v. Brian Carpenter, 736 S.W. 2d 405 (Mo. banc. 1987).....

State v. Swoboda, 658 S.W. 2d 24 (Mo. banc. 1983)

Constitutional Provisions

United States Constitution, Amendment Fourteen.....

Statutes

Missouri Revised Statutes of Missouri Section 574.010.0(1)(c) 1986.....

OPINION BELOW

The opinion of the Supreme Court of Missouri, affirming the trial court's ruling sustaining Respondent's motion to dismiss has been reported in 736 S.W. 2d (Mo. banc. 1987)

STATEMENT OF THE CASE

Respondent, Brian Carpenter, was charged by information on January 29, 1986 with three (3) counts of the Class B misdemeanor of peace disturbance, all in violation of Revised Statutes of Missouri Section 574.010.1(1)(c). On June 18, 1986 Respondent filed a motion to dismiss, alleging Section 574.010.1(1)(c) to be unconstitutional on its face as being overbroad in regulating speech. In a judgment, opinion and order issued on July 14, 1986, the Associate Circuit Court of Jefferson County, Missouri sustained Respondent's motion. From this order, the State of Missouri filed a timely appeal to the Supreme Court of Missouri. On September 15, 1987, that court affirmed the decision of the trial court. Following the court's denial of Petitioner's petition for rehearing, this petition for a writ of certiorari ensues.

ARGUMENT

Petitioner raised two arguments in its brief. First, Petitioner argues that Respondent's conduct is not "worthy of First Amendment protection and second contends that the Missouri Supreme Court adeptly and unduly limited view of what may constitute unprotected speech.

The law has been well established that anyone charged with a crime may raise the issue of the statutes overbreadth if it involves freedom of speech. Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971). Thus, Respondent has standing to challenge Section 574.010.1(1)(c) of the Missouri Peace Disturbance Statute.

In addressing Petitioner's second contention, the Missouri Supreme Court did not adopt an unduly limited view of what may constitute unprotected speech. Missouri courts have traditionally held that statutes abridging speech are constitutional to the extent that they prohibit only that speech which is likely to incite others to immediate violence. State v. Swoboda, 658 S.W. 2d 24 (Mo. banc. 1983).

Section 574.010(1)(c), RSMo. 1986 does not provide for the conduct in question to be immediate. Further, the statute does not require face to face confrontation. Respondent acknowledges that the right of free speech is not an absolute right, Schenech v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919). However, in determining what is or is not protected speech, the interests asserted by state officials wishing to circumscribe certain speech must be weighed against the

infringement of any protected rights of the individual.

In the case at bar, the interests asserted by state officials do not outweigh the infringement of protected rights against individuals.

As written in its present form, Section 574.010(1)(c), suffers from the infirmity of making it an offense to threaten to commit a crime no matter how minor or insubstantial. The statute acts to smother speech otherwise protected by the First Amendment in that "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." Gooding v. Wilson, 405 U.S. 518, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972).

CONCLUSION

The decision of the Missouri Supreme Court is well founded in law and fact. The present case contains no important issues which are in conflict with federal laws, state decisions or federal decisions. Wherefore, Respondent submits the Petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I, Steven M. Davis, am a member of the Bar of this Court, and that a true and correct copy of the Brief of Respondent in Opposition to Petition in the case of State of Missouri v. Brian Carpenter, No. 87-993, was mailed, pursuant to Supreme Court Rule 28.5(b), postage prepaid, this 24 day of March, 1988, to:

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